

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 5 of 2019

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Amiya Kumar Naik, aged about 46 years, S/o Alekh Charan Nayak, At-Darada, PO-Via-Borikina, Dist. - Jagatsinghpur.

.....Applicant

VERSUS

1. Union of India represented through Principal Chief Commissioner of Income Tax, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda – 751007.
2. Assistant commissioner of Income Tax, Headquarters (Administration), Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda – 751007.
3. Commissioner of Income Tax (Appeals), Cuttack, Stoney Road, PO-Chandnichowk, Dist.-Cuttack, 753002.
4. Income Tax Officer (Headquarters, Administration), Bhubaneswar, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda – 751007.

.....Respondents

For the applicant : Mr.D.P.Dhalsamant, counsel

For the respondents: Mr.G.R.Verma, counsel

Heard & reserved on : 26.11.2019 Order on : 18.12.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

In this OA the applicant has prayed for the following reliefs :

- “8.1 That the order dated `12.12.2014 (A/5) & order dated 21.2.2018 (A/6) be quashed.
- 8.2 That direction be issued to the respondents to provide an appointment under compassionate ground to the applicant in any Gr-C or Gr-D/MTS post within a stipulated period.
- 8.3 And further be pleased to pass any order/orders as deem fit and proper to give complete relief to the applicants.”

2. The father of the applicant, while working as a LDC under the respondents, had taken voluntary retirement on medical ground w.e.f. 31.3.1999 under the rule 38 of the CCS (Pension) Rules, 1972. The applicant applied for appointment on compassionate ground (in short ACG) on 7.4.1999 and when no action was taken by the respondents, he filed OA No. 390/2007, which was disposed of with a direction to the respondents to consider the grievance of the applicant. The respondent no. 4 informed the applicant vide his memo dated 17/18.3.2008 (Annexure-A/1) stating therein that he was not

eligible for the ACG since his father had retired on medical ground after age of 55 years. This decision was challenged by the applicant in OA No. 395/2008 and the Tribunal, vide order dated 16.12.2009, quashed the order dated 17/18.3.2008 and remitted the matter to the respondents for fresh consideration of the matter.

3. The respondents challenged the order dated 16.12.2009 before Hon'ble High Court in W.P. (C) No. 4728/2010 which was disposed of by Hon'ble High Court vide order dated 23.8.2010 with direction to the respondents to dispose of the matter within 60 days after giving personal hearing to the applicant. His case was considered by the Compassionate Appointment Committee (in short CAC) and was rejected vide order dated 5.8.2011 (Annexure-A/2). The applicant challenged the order in OA No. 666/2011, which was disposed of vide order dated 26.2.2013, quashing the order dated 5.8.2011 and remitting the matter to the respondents to consider as per the directions in OA No. 395/2008. Then his case was not recommended taking into account his financial condition vide order dated 3.6.2013 (Annexure-A/3). The applicant challenged in OA No. 522/2013 which was disposed of vide order dated 31.10.2014 (Annexure-A/4) quashing the order dated 3.6.2013. His case was reconsidered and rejected again vide order dated 12.12.2014 (Annexure-A/5). His case was again considered and vide order dated 21.2.2018 (Annexure-A/6), the applicant was informed that his case was not recommended for ACG for the year 2016-17. Being aggrieved, the applicant has challenged the order dated 21.2.2018 in this OA.

4. The grounds advanced in the OA are that the respondents have rejected his case with malafide intention to frustrate the Tribunal's order, since the ground which had been set aside by the Tribunal earlier cannot be invoked again by the authorities to reject his case again. It is also stated that the order does not disclose about more deserving cases, for which, it cannot be sustained.

5. The respondents, in the Counter have resisted the OA on the ground that the applicant's case was considered by the CAC more than three times, but his case could not be recommended following the criteria stipulated by the DOPT and CBDT. It is stated that the family members have independent source of income and the family of the applicant has ancestral properties. The allegation that the case was rejected with malafide intention has been denied.

6. Heard learned counsel for the applicant who submitted that the reasons mentioned in the impugned order to reject the case for ACG are not sustainable. Heard learned counsel for the respondents. He submitted that the applicant's case was considered by the Committee number of times, but it

could not be recommended for ACG as he did not secure the merit points required.

7. This is the fifth round of litigation for the request for compassionate appointment by the applicant after retirement of his father on medical ground w.e.f. 31.3.1999. From the order dated 31.10.2014 of the Tribunal (Annexure-A/4), it is observed that since the applicant's application for ACG was not considered, the applicant filed the OA No. 390/2007 which was disposed of with a direction to consider the case. Then the respondents rejected the case vide order dated 17/18.3.2008 on the ground that by the time the applicant's father retired, he was more than 55 years. The order was challenged in second round litigation in OA No. 395/2008, in which it was directed to reconsider the matter. The respondents unsuccessfully challenged the order of the Tribunal before Hon'ble High Court. On reconsideration, his case was considered for the post of Tax Assistant and rejected as he did not have qualification for the post of Tax assistant and the family was not considered to be in penury. The order was challenged in another OA (third round) and it was observed that no direction was given for consideration against the post of Tax Assistant and he could have been considered for the post for which the applicant had qualification. It was also observed by the Tribunal that the respondents did not adduce any proof in support of contention that the family was not in penury. Accordingly, the respondents were directed for reconsideration of the case. On reconsideration, the case was again rejected on the ground that as his case was not so indigent as to lead to economic penury and more deserving cases were there for consideration.

8. This order was challenged in fourth round OA, which was disposed of vide order dated 31.10.2014, which held as under:-

"13. The applicant challenged the said order in O.A. No. 395/2008 in which the order of rejection was quashed and the matter was remanded back to the Respondents for reconsideration. Aforesaid order of this Tribunal was challenged before the Hon'ble High Court of Orissa, which was dismissed. In compliance of the above, Respondents considered the case of the applicant but rejected on the ground that the applicant did not possess the requisite qualification, i.e. Degree from the Recognized University for Appointment as Tax Assistant. Again, the applicant challenged the said order in O.A.No.666/11 in which this Tribunal directed reconsideration on the ground that there was no direction in the earlier order that the case of the applicant for compassionate appointment should be considered against the post of Tax Assistant for which he does not have the qualification and that the Respondents did not adduce any irrefutable proof that the financial condition of the family is not penurious deserving appointment on compassionate ground. In compliance of the order of this Tribunal dated 26.2.2013 in OA No. 666/11, the Respondents considered the case of the applicant against MTS vacancy of the recruitment year 2010-11 but nothing has been stated with regard to vacancy in MTS for the year 2009-10 and 2008-09 respectively. This shows that the Respondents considered the case of the applicant without application of mind and without complying with the earlier orders of this Tribunal in letter and spirit. Though I am conscious that appointment on compassionate ground is not a matter of right yet a right is accrued on the applicant to claim consideration that too in a proper and fair

manner to the discussion made above what conclusively proved that there is no fairness in the entire action of the Respondents rather it *prima facie* show that the Respondents are adamant not to give appointment to the applicant whatever may be the direction of the Tribunal.

14. In the above consideration, I am constrained to hold that consideration given to the case of the applicant and the rejection is beyond the scope and ambit of the order of this Tribunal passed earlier which was also upheld by the Hon'ble High Court of Orissa. Hence, the order of rejection dated 03.06.2013 is hereby quashed. In the above circumstances direction for appointment is warranted but keeping in mind the decisions of the Hon'ble Apex Court that there can be no direction for straightaway appointment, while deprecating the inconsistent stand taken at various times to reject the case of the applicant, I direct the Respondents to reconsider the case of the applicant, in the light of the observation made above and communicate the decision to the applicant in a well-reasoned order within a period of 90 (ninety) days from the date of receipt of copy of this order."

9. In compliance of the order dated 31.10.2014 of the Tribunal. The respondents have passed the order dated 12.12.2014 (Annexure-A/5), rejecting the case again mentioning the grounds in the said order as under:-

"(a) Financial condition is not so indigent :

The Committee have noted that close to 16 years have passed since Shri Alekh Chandra Nayak took voluntary retirement. As mentioned in DOPT's OMs dated 9.10.1998 and 26.7.2012 there has to be a presumption that the family has some independent source of income that has helped them to survive for so long. The Committee noted that the previous Compassionate Appointment Committee in its meeting held on 27.5.2013 had found the family of the Government Servant as not so indigent to deserve compassionate appointment. The Committee have also noted that the family has ancestral property at Ghadodia, Ersama and also at Darada, Borikina, Dist.-Jagatsinghpur. The applicant has been engaged in medicine store and also married having two daughters. As per DOPT's OM No. 14014/02/2012-Estt(D) Dated 30.5.2013, ***a married son cannot be considered for compassionate appointment as he is not considered dependent on a government servant.***

(b) More deserving cases were there for recommendations:

It may be mentioned here that there were only two posts of MTS earmarked for compassionate appointment for the Recruitment year 2013-14 and the Committee found that there were two candidates the financial conditions of whom were deplorable so as to put them into economic penury. The Committee, therefore, recommended the names of Smt. Basanti Baskey, W/o late B.K.Baskey, Ex-OS and Shri Jitendra Kumar Das, S/o Late Gautam Das, Driver for the post of MTS.

It may also be mentioned here that the Hon'ble Supreme Court in Umesh Kumar Nagpal -vs- State of Haryana [JT 1994(3) SC 525] has laid down that ***compassionate appointment cannot be granted after lapse of a reasonable period and that it is not a vested right*** which can be exercised at any time in future. The Hon'ble Supreme Court, in its judgment dated 5.4.2011 in Civil Appeal No. 2206 of 2006 in Local Administration Department Vrs M.Selvanayagam has observed that "***an appointment made many years after the death of the employee*** or without due consideration of the financial resource available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee, ***would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal.***" (emphasis supplied)

10. The order dated 12.12.2014 (A/5) was not challenged by the applicant in time stipulated under section 21 of the A.T. Act, 1985. Then the respondents

considered the case of the applicant for the year 2016-17 and his case was rejected again vide order 21.2.2018 (Annexure-A/6), stating as under:-

“With reference to the above, I am directed to intimate you that, the recruitment process on compassionate ground for the recruitment year 2016-17 has been finalized. Your case was duly considered by the Compassionate Appointment Committee; however I feel extremely sorry to intimate that your case has not been recommended for appointment on compassionate ground for the recruitment year 2016-17.”

11. In the Counter, the respondents have enclosed the copy of the Minutes of the meeting of the CAC for the year 2016-17 (Annexure-R/1), based on which the order dated 21.2.2018 was issued. Perusal of the Minutes, it is noticed that the following observations have been made about the applicant's case:-

| S1.No. | Name of the Applicant/ Date of death/retirement on medical ground | Reasons for decision/recommendation |
|--------|---|--|
| 01. | Amiya Ku. Nayak, S/o A.C.Nayak/31.10.1998 | The qualification of the applicant is HSC pass for which he is eligible for the post of MTS only. Two more deserving applicants have been recommended for the post. He is also lower in rank in Point Based Criteria Table prepared as per CBDT's letter from F.No.A- 12012/09/2015-Ad.Vii dated 08.04.2015. |

12. It is noted in the Minutes that the applicant was given 33 points. Since the applicant was only eligible for the post of MTS on account of his qualification, it is seen that two candidates recommended for the post of MTS had more points than the applicant.

13. No Rejoinder to contradict the averments in the Counter has been filed by the applicant. Hence, the observation by the CAC that there were more deserving candidates for the post of MTS than the applicant has not been contradicted by the applicant. The applicant was admittedly not qualified for consideration for the post of Tax Assistant for which there were 7 vacancies as per the Minutes. Hence, the contention of the respondents in para 7 of the Counter that there were more deserving candidates than the applicant, has been substantiated by the respondents by furnishing the copy of the Minutes of the CAC at Annexure-R/1 of the Counter.

14. In the circumstances as discussed above, I am of the considered view that adequate grounds have not furnished in the OA to justify any interference of the Tribunal in this matter. The OA is accordingly dismissed. There will be no order as to cost.

(GOKUL CHANDRA PATI)
MEMBER (A)

